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No. 849

IN THE

Supreme Court of the United States

October Term, 1943

J. J. BOWMAN and JAMES S. BOWMAN, d.b.a. BOWMAN REALTY COMPANY,

Petitioners,

v.

CHESTER BOWLES, Price Administrator,

Respondent.

PETITION FOR WRIT OF CERTIORARI

To the United States Emergency Court of Appeals and

BRIEF IN SUPPORT OF PETITION

J. J. Bowman and James S. Bowman,
doing business as Bowman Realty Company,
323 Hammond Street, Cincinnati 2, Ohio,
Petitioners.

Paul W. Steer,
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Cincinnati 2, Ohio,
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The Johnson & Hardin Co., Law Printers
Cincinnati, Ohio

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CHESTER BOWLES, Price Administrator,

Respondent.

PETITION FOR WRIT OF CERTIORARI

To the United States Emergency Court of Appeals

To the Honorable Harlan Fiske Stone, Chief Justice of the United States, and to the Associate Justices of the Supreme Court of the United States:

Your petitioners, J. J. Bowman and James S. Bowman, doing business as Bowman Realty Company, pray that a writ of certiorari issue to review the judgment of the United States Emergency Court of Appeals in the cause entitled *J. J. Bowman and James S. Bowman, d.b.a. Bowman Realty Company* v. *Chester Bowles, Price Administrator,* No. 88 on the docket of said Court. Said judgment

became final on March 6, 1944, on denial by said Court of Petitioners' motion for rehearing therein.

In support of this said petition, Petitioners respectfully represent to this Court as follows:

SUMMARY AND STATEMENT OF THE MATTER INVOLVED

Heretofore, on September 29, 1943, Petitioners duly filed a Complaint in the United States Emergency Court of Appeals against the Administrator of the Office of Price Administration, by reason of his denial of Petitioners' Protest No. RPA-III-12-P, duly filed with said Administrator on July 31, 1943, and denied by him on September 1, 1943.

Petitioners' said Complaint was duly docketed as cause No. 88 in said Court, and came on for hearing in Cincinnati on January 13, 1944. Judgment was entered by said Court on February 24, 1944, dismissing said Complaint, and on motion duly made for rehearing, the Court denied said motion by its final Order dated March 6, 1944.

There is lodged herewith, and certified to be correct by the Honorable Herman C. Beasley, Clerk of the United States Emergency Court of Appeals, a transcript of record of said cause in said Court. The transcript includes copies of the following documents and papers:

1. Complaint by Petitioners herein, the complainants in said Emergency Court of Appeals.
2. Answer of Price Administrator, Respondent here and in said Emergency Court of Appeals.
3. Transcript of Proceedings before the Price Administrator.
4. Proceedings in the United States Emergency Court of Appeals other than said Complaint and Answer.

The Complaint and the Petition for Writ of Certiorari herein involve the application of Rent Regulations established by the Price Administrator pursuant to the Emer-

gency Price Control Act of 1942 to Petitioners' housing accommodations in Cincinnati, Ohio.

At the time of the institution of the proceedings, two principal Rent Regulations were effective in the Cincinnati Defense Rental Area, one designated Rental Regulation for Housing (hereinafter referred to as Housing Regulations) providing control over rents for housing accommodations other than hotels and rooming houses; the other, designated Rent Regulations for Hotels and Rooming Houses (hereinafter referred to as Hotel Regulations), which controlled rents for hotels and rooming houses. These Regulations imposed the maximum rent date method of rent control.[1] Both Regulations became effective in the Cincinnati Area on November 1, 1942, and established March 1, 1942, as the maximum rent date.

Petitioners are managing operators of a building in Cincinnati, known as the Rosedale Apartments, containing 32 rental units, and which has been operated for approximately ten years as an apartment hotel. After establishment of the Rent Regulations by the Administrator, Petitioners filed registration statements under the Housing Regulations for each of the 32 rental units, setting forth a variable or sliding scale of rents maintained in said building. This scale provided higher weekly and monthly rates for each apartment when rented on a temporary basis, than it provided for rental on a long term basis; it also provided increased rents when an apartment was let to occupants beyond a specified number. This registration was refused by the Area Rent Director of the Office of Price Administration, on the grounds that the Housing Regulation made no allowance for a sliding or variable scale of rents (Transcript of Proceedings Before the Price Administrator, pp. 3 and 20; Transcript of Record, p 3 & 20.

[1] For explanation of tnis method of control, see *Hillcrest Terrace Corporation* v. *Brown*, 137 Fed. (2d) 663, and *The Lakemore Co.* v. *Brown*, 137 Fed. (2d) 355.

Simultaneously, the Area Rent Director, through his Chief Rent Attorney, advised Petitioners that their sliding scale of rents *then admittedly in operation* might be maintained under the Hotel Regulation, with the consent of the Area Rent Director. Thereupon, Petitioners tendered registration under the Hotel Regulation. After considering this proposed registration, the Area Rent Director found that the provisions of the Housing Regulations were better adapted to the rental practices for the building, and refused to accept Petitioners' registration under the Hotel Regulation.

Upon application for review, the Regional Administrator confirmed the Area Rent Director's Order, whereupon Petitioners filed a Protest before the Administrator, requesting that the Orders previously made be reversed, and that the Area Rent Director be ordered to consent to the registration under the Hotel Regulation, or, in the alternative, that the Price Administrator hold that the Housing Regulation permitted a variable or sliding scale of rents for Petitioners' accommodations.[2]

The Administrator denied the Protest, and the Complaint was filed before the Emergency Court of Appeals.

The Complaint charges, in part, that the announced purpose of the Emergency Price Control Act of 1942, to wit:

> "It is hereby declared to be in the interest of the national defense and security and necessary to the effective prosecution of the present war, and the purposes of this Act are, to stabilize prices and to prevent speculative, unwarranted, and abnormal increases in prices and rents; to eliminate and prevent profiteering, hoarding, manipulation, speculation, and other disruptive practices resulting from abnormal market con-

[2] Whether the Administrator was requested to grant this alternative relief is disputed. Petitioners assert that such prayer was made. The Emergency Court of Appeals found that it was not made with sufficient clarity. This will be further discussed hereafter under the heading "Questions Presented."

> ditions or scarcities caused by or contributing to the national emergency; . . . ''

contemplated, as to rents, a fixing of the status then in operation and not an imposition of new business practices and methods of operation; that the ruling of the Administrator did not fix the status of Petitioners' then current operation, but that it ordered the lowest rent on their rental schedule on the ''freeze date'' and improperly and unlawfully discarded the remainder of their rental schedules.

The Complaint further charged that this destruction of the business practice of long standing and the elimination of part of their rental schedules, is contrary to both the intent of the Emergency Price Control Act of 1942, and the Rent Regulations thereunder, for the reason that paragraph 10 of Section 13, of the Rent Regulation for Housing, defines ''rent'' in this fashion:

> ''Section 13 (10). 'Rent' means the consideration . . . , demanded or received for the use or occupancy of housing accommodations . . .''

and that it did not matter whether the property be considered a hotel or housing unit, since both permit and contemplate a situation in which there can be more than one ''legal maximum rent,'' in Petitioner's case a variable or sliding scale of rents dependent upon term of occupancy.

STATEMENT OF JURISDICTION

Jurisdiction of this cause is vested in this Honorable Court by the provisions of the Emergency Price Control Act of 1942. Section 204 (d) of said Act [50 U. S. C. A. App. Sec. 924(d)] which provides in part as follows:

> "Within 30 days after entry of a judgment or order, interlocutory or final, by the Emergency Court of Appeals, a petition for a writ of certiorari may be filed in the Supreme Court of the United States, and thereupon the judgment or order shall be subject to review by the Supreme Court in the same manner as a judgment of a Circuit Court of Appeals, as provided in Sec. 240 of the Judicial Code as amended. . . . The Emergency Court of Appeals, and the Supreme Court upon review of judgments and orders of the Emergency Court of Appeals, shall have exclusive jurisdiction to determine the validity of any regulation or order issued under Section 2 . . ." [of the Price Control Act, which is the Section authorizing rent and price control, and which covers the regulations and orders herein at issue].

The Petitioners have duly followed the procedure set forth in the Emergency Price Control Act, and the subject matter of their Protest before the Price Administrator and before the Emergency Court of Appeals is that specified in the appropriate provisions of the Act, as hereinabove set forth.

QUESTIONS PRESENTED AND REASONS RELIED UPON FOR ALLOWANCE OF WRIT

1. Are the Petitioners entitled to an order construing the Housing Regulations as permitting a variable and sliding scale of rentals? (This was the alternative relief prayed for by Petitioners before the Administrator and the Emergency Court of Appeals, i. e., alternative to the Administrator's acceptance of the registration under the Hotel Regulation.)

The Emergency Court of Appeals answered this question in the negative, for the reason that the question "was not raised in the Protest proceedings with sufficient clarity to have required the Administrator's consideration and ruling."

Petitioners contend that this question should have been answered in the affirmative, for the reason that (a) the question was raised in the Protest proceedings, and (b) the Emergency Court of Appeals itself has ruled in its decision in the within cause that it was the duty of the Administrator to decide which of the two Regulations is better adapted to the practices for Petitioners' building. (Emergency Court of Appeals opinion, p. 6; Transcript of Record, p. 77.)

2. Did the Emergency Court of Appeals err in holding the general averments of the Complaint that Petitioners had a long and continued practice of renting units on a variable or sliding scale of rentals, were "unsupported by evidence"? [3]

Petitioners contend that the Court of Appeals did err in holding that the averments of the long and continued practice of renting units on a variable or sliding scale of rentals were unsupported by the evidence. The record con-

---

[3] This is not a question of fact nor a question involving weight of the evidence. The Emergency Court of Appeals held that there was *no* evidence of the practice; not that there was *insufficient* evidence of the practice; not that the *weight* of the evidence did not support the practice.

tains affirmative averments and evidence adduced by Petitioners, that such practice was then currently being maintained, and had been the method of operation for a period of ten years.

The record contains evidence in part in the form of specific admissions by the Office of Price Administration, that the practice of renting on a variable or sliding scale of rentals, was then currently being maintained by Petitioners, and had been their practice over a long period of years.

3. Assuming that the averments of the Complaint in reference to the maintenance of the practice of the variable or sliding scale of rentals over a long period of time, were unsupported by evidence, which is not the fact, did the Emergency Court of Appeals err in holding that general averments, neither admitted nor specifically denied by the Administrator, are insufficient to overcome the presumption of law that the Administrator's decision was proper?

Petitioners contend that the Court of Appeals did err in holding that the averments of the Complaint were not sufficient to overcome the presumption of law that the Administrator's decision is proper. The Administrator's Answer was precise and meticulous and specifically admitted the matters of fact in controversy, and then said that the "other allegations of the Complaint are argumentative, or involve conclusions of law, to which Respondent does not plead. To the extent that the other allegations of the Complaint may be treated as allegations of fact, Respondent denies such allegations."

In the light of the detailed and responsive answer, this general issue was not sufficient to put Complainants on notice that the averments as to the long and continued practice of maintaining the variable and sliding scale of rents was at issue. This is patently so in view of the fact

that the Office of Price Administration had already admitted the existence of the practice (see "Questions Presented," No. 2 above). In *any event,* the averments having been made and the Office of Price Administration having admitted the existence of the practice in prior statements in the proceedings, the Court obviously should not have dismissed the Complaint.

Respectfully submitted,

J. J. Bowman and James S. Bowman,
d.b.a. Bowman Realty Company,
Petitioners.

Paul W. Steer,
Attorney for Petitioners.

Dated Cincinnati, Ohio, April 3, 1944.

STATE OF OHIO, COUNTY OF HAMILTON, SS:

J. J. Bowman, being first duly sworn, deposes and says that he is one of the petitioners in the foregoing petition for writ of certiorari, and that he has read the foregoing petition for writ of certiorari, and knows the contents thereof, and that the same is true except as to those matters therein stated on information and belief, and as to those matters he believes it to be true.

J. J. Bowman

Subscribed and sworn to before me this 3rd day of April, 1944.

Lillian Bussey

Lillian Bussey,
Notary Public in and for Hamilton County, Ohio.
My commission expires November 8, 1946.

No. _____

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v.

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Respondent.

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

I

STATEMENT OF GROUNDS ON WHICH THE JURISDICTION OF THIS COURT IS INVOKED

Refer to "Statement of Jurisdiction" hereinbefore set forth, at page 6.

II

STATEMENT OF THE CASE

Refer to "Summary and Statement of the Matter Involved," hereinabove set forth, at page 2, and "Questions Presented and Reasons Relied Upon for Allowance of Writ," hereinbefore set forth, at page 7.

III

ERRORS OF COURT BELOW

Refer to "Questions Presented and Reasons Relied Upon for Allowance of Writ," hereinbefore set forth, at page 7.

IV

ARGUMENT

(a)

PETITIONERS ARE ENTITLED TO A RULING CONSTRUING THE HOUSING REGULATIONS AS PERMITTING A VARIABLE AND SLIDING SCALE OF RENTALS

Petitioners contend that if the Administrator properly denied their election to register within the Hotel Regulation, the Administrator—and in his default, the Emergency Court of Appeals—should have granted alternative relief to Petitioners by construing the Housing Regulation as permitting a sliding scale of rents.

The Emergency Court of Appeals refused to consider Petitioners' Application for alternative relief for the reason that the point "with regard to the construction of the Housing Regulation was not raised in the Protest proceedings with sufficient clarity to have required the Administrator's consideration and ruling," and consequently the Emergency Court of Appeals accepted "the Administrator's interpretation of the Housing Regulation as not permitting a sliding scale of rents" (Emergency Court of Appeals Opinion, pages 3 and 4; Transcript of Record, page 76v77).

It is submitted that this alternative relief from the institution of the proceedings has been the essence of Petitioners' prayed for relief. In the original Order of the Area Rent Director, issued March 19, 1943 (Transcript of Proceedings before the Price Administrator, page 43; Transcript of Record, page 43), the Director found:

"The Director therefore finds that the provisions of the Maximum Rent Regulations for Hotels and Rooming Houses are not better adapted to the rental practices for said building than are the provisions of the Maximum Rent Regulations for Housing Accommodations other than Hotels and Rooming Houses, but finds that the provisions of the Maximum Rent Regulations for Housing Accommodations other than Hotels and Rooming Houses are better adapted to the rental practices for such building and establishment. The Director therefore refuses to consent to the landlord's election." (Election to register under Hotel Regulation.)

It was from this Order that the Application for Review and then the Protest were taken (Protest was filed July 31, 1943, and denied by the Administrator September 1, 1943). At all times the question has been not which Regulations (Housing Regulation or Hotel Regulation) was better designed for Petitioners' Accommodations, but whether this variable or sliding rental practice could be maintained. It is, and always has been, immaterial to Petitioners which Regulation they are subjected to, if the practice of variable and sliding scale of rents could be maintained. This is patently evident in all the proceedings. It should be further pointed out that the Protest against the Area Rent Director's Order and the Administrator's refusal to permit the registration under the Hotel Regulation, was in itself an alternative relief requested by Petitioners, for they at first sought to register under the Housing Regulations, which had been denied by the Area Rent Office, with the suggestion by the Chief Rent Attorney that recourse be had to the Hotel Regulation. The Chief Rent Attorney said, in part (Transcript of Proceedings before the Price Administrator, page 21; Transcript of Record, page 27).

> "Your only recourse, as I see it, is an election by you to come within the Hotel and Rooming House Regulations. The landlord who so elects shall file a registration statement under the Hotel and Rooming House Regulations accompanied by a written request to the director to consent to such election. . . ."

Further, a Memorandum was filed contemporaneously with the Protest to the Administrator (Transcript of Record, page 70), which was entitled "Memorandum In Support of Owners' Registration of Variable Rent Schedule," which pointed out to the Administrator that the relief desired by Petitioners was to secure the consent of the Administrator to their variable rent schedule. That Memorandum is replete in its argument for the variable rent schedule, as is the Protest; and the Administrator's opinion clearly evidences that the matter involved was Petitioners' variable rent schedule, and not under which of the Regulations Petitioners could be registered properly.

And lastly, the Emergency Court of Appeals itself held, in its decision in the within cause, that it was the duty of the Administrator to decide which of the two Regulations is better adapted to the practices for Petitioners' building (Emergency Court of Appeals Opinion, page 6; Transcript of Record, page 77). The Court said:

> "When an election is made under this section, it is the obvious duty of the Administrator, in order to be able to determine whether he should consent to the election, to ascertain the rental practices for the building. Upon ascertaining this factual situation, it then becomes his duty to decide which of the two Regulations is better adapted to the practices for the building. In reviewing this procedure, this Court must follow the same course. . . ."

The Court then denied Petitioners the alternative relief prayed for, to wit, a construction of the Housing Regula-

tions as permitting a variable and sliding scale of rentals, because, the Court said, the question was not raised with sufficient clarity, in the face of its ruling that it was the duty of the Administrator, and its duty, to determine the question of the variable and sliding scale of rentals, even though it were not raised!

It is submitted, therefore, that the Emergency Court of Appeals erred in holding that the alternative relief specifically requested of the Emergency Court of Appeals was not raised with sufficient clarity to have required the Administrator's consideration. The fact is that it was the only consideration before the Administrator and the Emergency Court of Appeals hereinabove set forth.

(b)

THE EMERGENCY COURT OF APPEALS ERRED IN HOLDING THE GENERAL AVERMENTS OF THE COMPLAINT, THAT PETITIONERS HAD A LONG AND CONTINUED PRACTICE OF RENTING UNITS ON A VARIABLE OR SLIDING SCALE OF RENTS, WERE UNSUPPORTED BY EVIDENCE [MEANING "NO EVIDENCE"]

In Petitioners' Complaint, the following is set forth:

> "Complainants say further that they elected to register said property under the Rent Regulation for Hotels and Rooming Houses because of the aforementioned advices, and because of the following, to-wit:
>
> "(1) Approximately ten years' operation under a variable or sliding scale of rents, as determined by the term of occupancy and the number of occupants.
>
> "(2) Approximately ten years' operation as an apartment hotel, during which period said property was in direct competition with other apartment hotels in the City of Cincinnati.
>
> "(3) Approximately ten years' operation, during which period all of the units in the said property have been offered as furnished apartments.

"(4) Approximately ten years' operation, during which period accommodations for transient guests have been at all times available.

"(5) Approximately ten years' operation, during which period there have been offered, and available to guests, standard apartment hotel services.

"(6) That other properties, similar to, or exactly like, said property, in Cincinnati and elsewhere, are considered apartment hotels, and are registered, if at all, under the Rent Regulation for Hotels and Rooming Houses."

The identical allegations were made before the Administrator, and not an iota of evidence was before him to indicate the contrary. In fact, a verified statement (Transcript of Proceedings before the Price Administrator, page 8; Transcript of Record, page 8) of one of the Petitioners stated: "Affiant further says that the controversy in this matter relates to the business practice of long standing in the Rosedale Apartments of charging variable rents, depending upon the term of tenancy and the number of occupants, and asks that the attached memorandum be made and considered a part hereof."

The evidentiary processes here ceased, because the Office of Price Administration itself admitted the existence of and the long standing nature of Petitioners' practice of variable or sliding scale of rentals.

If, and only if, admissions of the responding party—here the Office of Price Administration—may not be considered in support of the claims and contentions of the opposite party, is the finding of the Emergency Court of Appeals supportable; if admissions of the responding party are "no evidence," then the Court's finding is supportable.

This proposition is, of course, patently unsound. *What is admitted need not be otherwise evidenced.*

Here then is the evidence supporting the general averments as to Petitioners' variable or sliding scale rental practices.

On February 10, 1943 (after the controversy had arisen and after the registration had been submitted under the Housing Regulation) the Chief Rent Attorney in the Office of the Area Rent Director, Cincinnati, Ohio, wrote to Mr. J. J. Bowman (one of Petitioners) as follows (Transcript of Proceedings before the Price Administrator, pages 20-21; Transcript of Record, page 20):

"OFFICE OF AREA RENT DIRECTOR,

"126 East Fourth Street, Cincinnati, Ohio,

"Parkway 0100, February 10, 1943.

"Bowman Realty Company,

"3547 Rosedale Place, Cincinnati, Ohio

"Dear Mr. Bowman: You own an apartment building. *At all times prior to March 1, 1942, you have maintained a varying schedule of charges based upon term of occupancy and based upon number of occupants.* For example, you have a weekly rate of $45 per week, monthly rate of $150 per month, semipermanent (or six months) rate of $100 a month and a permanent (or yearly occupancy) on a basis of $85 per month. In addition there is a $10 charge per month for each occupant in excess of three. All of your other furnished apartments have rates based upon weekly, monthly, six months or yearly occupancy; also there is additional charge for occupants on all of your other apartments although the additional charge in some cases is for occupants in excess of two and some in excess of four. In some apartments you also have extra charge for garage. *You want to maintain the same schedule of charges.* You state that in your business it is *necessary to have different rates depending upon terms of occupancy and number of occupants, because it is a much more expensive proposition when the person stays on a temporary basis only.* You are required to do more cleaning and refurnishing of the apartment. Also, more occupants usually result in harder wear and tear upon the furniture. The tenants who occupied the various apartments on March 1 may

have been in on weekly, mont y, semipermanently, or yearly basis and, therefore, if no provision may be made for different terms of occupancy or for additional occupants your maximum legal rent might in some cases be high because the person who occupied was on a weekly basis or lower in other cases because the occupant was on so-called permanent basis. (Italics Petitioners.')

Here then is the Office of Price Administration itself finding, as a matter of fact, that the practice was of long standing, and then currently being maintained by Petitioners. How is it possible, then, for the Emergency Court of Appeals to find that no facts are shown in support of Complainants' claim?

What was the legal or evidentiary necessity for further evidence, when the Office of Price Administration itself had unqualifiedly admitted that the practice existed and was then currently being maintained!

It is submitted, therefore, that the Emergency Court of Appeals erred in holding that the general averments of the Complaint in reference to the long and continued practice of renting units on a variable or sliding scale of rentals, were unsupported by evidence.

(c)

THE EMERGENCY COURT OF APPEALS ERRED IN HOLDING THAT THE AVERMENTS OF THE COMPLAINT, NOT ADMITTED NOR SPECIFICALLY DENIED BY THE ADMINISTRATOR, ARE INSUFFICIENT TO OVERCOME THE PRESUMPTION OF LAW THAT THE ADMINISTRATOR'S DECISION WAS PROPER

It should be observed at this point that the Administrator's answer was filed after the Transcript of the Proceedings Before the Price Administrator had been prepared, and therefore it must be indisputably presumed that it was

made with the knowledge of what that Transcript contained. The Transcript contained, as hereinabove set forth in IV (b) specific admissions of the Chief Rent Attorney of the Office of the Area Rent Director, in Cincinnati, that Petitioners had a long-continued, and were then currently maintaining, the practice of variable and sliding scale rentals. So, when the Administrator came on to answer, there was prepared a detailed and meticulously responsive answer, specifically admitting and denying the various averments of the Complaint. In view of the fact that the variable or sliding scale was the nub of the whole controversy, it is highly significant that in the detailed, responsive and specific answer, no denial was made by the Administrator of Petitioners' long and continued practice in reference to variable and sliding scales. Is it not patently obvious, then, in view of the fact that it was the nub of the whole controversy, and in view of the fact that the Office of Price Administration had specifically admitted the maintenance of the practice in the past and in the present, that the Administrator did not intend to deny, nor did he actually, deny, in his answer, the maintenance of the practice?

Therefore, the Emergency Court of Appeals erred in going into the adjective question and dismissing Petitioners' Complaint for what erroneously appeared to the Court to be a defect in the pleadings.

In any event, however, even though the adjective questions, *on the pleadings alone*, were properly decided, it is certainly apparent that because of the evidence [IV (b)], the question was quite improperly taken under consideration by the Emergency Court.

CONCLUSION

The real question before the Administrator, and before the Emergency Court of Appeals, was whether Petitioners may properly maintain their variable or sliding scale of rentals. It is submitted that the Emergency Court of Appeals subverted the intention of the parties to determine whether or not Petitioners may properly maintain the variable or sliding scale of rents by first refusing to consider alternative relief by finding that it was not requested of the Administrator with sufficient clarity, and further by holding that there was no evidence to support the averments of the Complaint when in fact the averments had been unequivocally admitted all through the proceedings.

WHEREFORE, Petitioners pray for the allowance of their writ, and for such other and further relief to which they may be entitled in the premises.

Respectfully submitted,

PAUL W. STEER,
Attorney for Petitioners.

Dated Cincinnati, Ohio, April 3, 1944.

FILED
MAY 9 1944

No. 848

In the Supreme Court of the United States

OCTOBER TERM, 1943

J. J. BOWMAN AND JOHN S. BOWMAN, D/B/A BOWMAN REALTY COMPANY, PETITIONERS

v.

CHESTER BOWLES, PRICE ADMINISTRATOR

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES EMERGENCY COURT OF APPEALS

BRIEF FOR THE RESPONDENT IN OPPOSITION

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585848—44——1

In the Supreme Court of the United States

OCTOBER TERM, 1943

J. J. BOWMAN AND JAMES S. BOWMAN, D. B. A. BOWMAN REALTY COMPANY, PETITIONERS

v.

CHESTER BOWLES, PRICE ADMINISTRATOR

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES EMERGENCY COURT OF APPEALS

BRIEF FOR THE RESPONDENT IN OPPOSITION

OPINION BELOW

The opinion of the United States Emergency Court of Appeals (R. 74–81) is not yet reported. Its judgments dismissing the complaint and denying the Petition for Rehearing are set forth at pages 82 and 83 of the Record.

JURISDICTION

The judgment of the United States Emergency Court of Appeals dismissing the Complaint was entered on February 24, 1944; and that denying the Petition for Rehearing was entered on March

8, 1944. The petition for a writ of certiorari was filed April 5, 1944. Jurisdiction of this Court is invoked under Section 204 (d) of the Emergency Price Control Act of 1942, as amended, 56 Stat. 23, 765 (sometimes referred to herein as "the Act").

QUESTIONS PRESENTED

1. Whether any objection to the validity or the construction of the Rent Regulation for Housing was properly raised by the petitioners in the Emergency Court of Appeals.

2. Whether the Administrator's determination denying consent to petitioner's election, under Section 1 (e) of the Rent Regulation for Hotels and Rooming Houses, to bring their accommodations within the purview of that Regulation rather than the Regulation applicable to other types of accommodations, was arbitrary, capricious, or otherwise contrary to law.

STATUTE AND REGULATIONS INVOLVED

The pertinent provisions of the Emergency Price Control Act of 1942, as amended, and those of the two Rent Regulations involved (Rent Regulation for Housing, and Rent Regulation for Hotels and Rooming Houses) are set forth in the Appendix, *infra*, page 18, *et seq.*

STATEMENT

On October 22, 1942, the Administrator issued two maximum rent regulations, Nos. 53 and 54A,

establishing maximum rents for substantially all housing accommodations in the Cincinnati Defense-Rental Area. Maximum Rent Regulation No. 54A for Hotels and Rooming Houses in that Area,[1] effective November 1, 1942, established as the maximum legal rents for rooms in hotels and rooming houses which were rented or regularly offered for rent during the 30 days ending on March 1, 1942—

> the highest rent for each term or number of occupants for which the room was rented during that thirty-day period, or, if the room was not rented or was not rented for a particular term or number of occupants during that period, the rent for each term or number of occupants for which it was regularly offered during such period.[2]

Maximum Rent Regulation No. 53 for Housing Accommodations Other than Hotels and Rooming Houses in the Cincinnati Area,[3] issued and effective at the same time as the Hotel Regulation, established generally as maximum rents for ac-

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[1] 7 F. R. 8602. Subsequently designated Rent Regulation for Hotels and Rooming Houses, 8 F. R. 7334, and referred to hereinafter as "Hotel Regulation."

[2] Hotel Regulation, Section 4 (a). The opening paragraph of this Section states: "This section establishes separate maximum rents for different terms of occupancy (daily, weekly, or monthly) and numbers of occupants of a particular room."

[3] 7 F. R. 8596. Subsequently designated Rent Regulation for Housing, 8 F. R. 7322, and referred to hereinafter as "Housing Regulation."

commodations other than hotels and rooming houses[4] the rents charged on March 1, 1942. Thus, Section 4 (a) of the Housing Regulation provides:

> Maximum rents (unless and until changed by the Administrator as provided in section 5) shall be:
>
> (a) *Rented on maximum rent date.* For housing accommodations rented on the maximum rent date [March 1, 1942], the rent for such accommodations on that date.

Unlike Section 4 (a) of the Hotel Regulation, this Section contains no specific provision for charging varying rents, depending upon or fluctuating with the term of occupancy of particular rooms.

Petitioners are the managing operators of a 32-unit apartment building known as Rosedale

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[4] The Hotel Regulation, in Section 1 (a), provides that it shall apply to rooms in hotels and rooming houses. As a corollary, Section 1 (b) (3) of the Housing Regulation exempts from its provisions hotels, rooming houses, or other accommodations brought under control of the Hotel Regulation with the consent of the Administrator. Both Regulations define as a hotel "any establishment generally recognized as such in its community, containing more than 50 rooms and used predominantly for transient occupancy" (Housing Regulation, Section 13 (a) (11); Hotel Regulation, Section 13 (a) (13)); and a rooming house as "a building or portion of a building other than a hotel in which a furnished room or rooms not constituting an apartment are rented on a short-time basis of daily, weekly, or monthly occupancy to more than two paying tenants not members of the landlord's immediate family . . ." Housing Regulation, Section 13 (a) (12); Hotel Regulation, Section 13 (a) (14)).

Apartments, located in Cincinnati, Ohio (R. 3). On March 1, 1942, 31 units were rented under yearly lease and the remaining unit under semi-annual lease (R. 6, 13). Since their accommodations were not embraced within the definitions of hotels or rooming houses in the Hotel Regulation they became subject to the provisions of the Housing Regulation. Pursuant to Section 7 of this Regulation petitioners attempted to file registration statements for their apartments with the area rent-control office (R. 15–19). These statements failed to list single maximum rents for each apartment, as called for by Part C, item 7 of the registration form (R. 16–17), but listed for each apartment several maximum rents varying with the term of occupancy and number of occupants.[5] The registration statements were rejected by the local Area Rent Director on the ground that Section 4 (a) of the Housing Regulation did not permit varying maximum rents for housing units, depending on the term of occupancy (R. 7, 20). Petitioners were also notified that the maximum

[5] E. g., with respect to Apartment No. 1, which was rented under yearly lease on March 1, 1942, at $85.00 per month (R. 6), petitioners inserted the following in a blank space on the registration form: "Temporary rate, $45 per week. Temporary rate, $150 per month. Semipermanent rate, $100 per month. Permanent on contract rate, $85 per month. Plus $10 per month for each occupant in excess of 3" (R. 18). The maximum rents for all of the units are as listed in protestant's Exhibit 2, in the column headed "March 1, 1942" (R. 6). The weekly and monthly rates it desired to establish as maximum rents are listed in columns A and B.

rent for each of their units was the rent charged on March 1, 1942, irrespective of whether the tenant's term of occupancy was of longer or shorter duration than the maximum rent date tenant's term (R. 21–22).

At the time these registration statements were rejected, petitioners were advised that Section 1 (e) of the Hotel Regulation provided a method whereby the jurisdiction over accommodations for which varying maximum rents were desired to be established might be transferred from the Housing Regulation to the Hotel Regulation (R. 21). This Section provides that accommodations which do not come within the definitions of hotel or rooming house in the Regulations may be brought within the scope of the Hotel Regulation upon an election made by the owner with the consent of the Rent Director or Price Administrator.[6] Consent

[6] Section 1 (e) of the Hotel Regulation provides:

"(e) *Election by landlord to bring housing under this regulation.* Where a building or establishment which does not come within the definitions of a hotel or rooming house contains one or more furnished rooms or other furnished housing accommodations rented on a daily, weekly, or monthly basis, the landlord may, with the consent of the Administrator, elect to bring all housing accommodations within such building or establishment under the control of this regulation. A landlord who so elects shall file a registration statement under this regulation for all such housing accommodations, accompanied by a written request to the Administrator to consent to such election.

"If the Administrator finds that the provisions of this regulation establishing maximum rents are better adapted to

to the election must be given if it is determined that the provisions of the Hotel Regulation "are better adapted to the rental practices" for the building than the provisions of the Housing Regulation.[7] Petitioners, however, were given no assurance that their situation would meet that standard (R. 22).

Thereafter, on February 15, 1943, and March 10, 1943, petitioners filed their election or petition for individual relief with the Rent Director for the Cincinnati Defense-Rental Area, requesting his consent to their election to bring their accommodations under the control of the Hotel Regulation (R. 23, 24, 41). On March 19, 1943, the Rent Director entered an order denying consent to such election (R. 43–44). On April 21, 1943, petitioners filed with the Regional Administrator for Region III an application for review of the Area Rent Director's order accompanied by their objections to that order (R. 45). On June 15, 1943, the application for review was denied, with appropriate findings of fact and accompanying opinion (R. 50).

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the rental practices for such building or establishment than the provisions of the Rent Regulation for Housing, he shall consent to the landlord's election. Upon such consent, all housing accommodations within such building or establishment which are or hereafter may be rented or offered for rent shall become subject to the provisions of this regulation, and shall be considered rooms within a rooming house for the purposes of the provisions relating to eviction."

[7] *Ibid.*

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Subsequently, on July 31, 1943, petitioners filed their protest with the Price Administrator, requesting that "the orders heretofore made in this matter be reversed," and that the Area Rent Director be "ordered to consent to Protestants' registration of the subject property under Maximum Rent Regulations for Hotels and Rooming Houses" (R. 1, 4). The protest was denied by order issued September 1, 1943 (R. 11). In an accompanying opinion stating the grounds for denial the Administrator found that petitioners' rental practices were not better adapted to the Hotel Regulation than to the Housing Regulation for the reason that the actual rentings on March 1, 1942, and thereafter, were for permanent occupancy whereas the Hotel Regulation was intended to control rentals for accommodations rented on a nonpermanent or transient basis (R. 13–14).

Petitioners' complaint to the order denying their protest was filed in the Emergency Court of Appeals on September 29, 1943 (R. 53). The complaint was dismissed on February 24, 1944, the court holding that since the Administrator's finding that petitioners' rental practices were not better adapted to the Hotel Regulation than to the Housing Regulation was not unreasonable, his refusal of consent to their election was not arbitrary, capricious, or otherwise contrary to law (R. 74). On March 8, the court denied peti-

tioners' petition for rehearing which had been filed on March 6, 1944 (R. 83).[8]

ARGUMENT

The decision of the Emergency Court of Appeals presents no constitutional question and no issue of federal law of general significance.

1. The court correctly determined that neither the construction nor the validity of Section 4 (a) of the Housing Regulation was before it for de-

[8] Subsequently, on petitioner J. J. Bowman's plea of guilty, a judgment was entered on April 17, 1944 by the United States District Court for the Southern District of Ohio, in No. 6346, adjudging petitioner guilty on the following count, upon indictment duly presented:

"J. Julian Bowman, on or about February 15, 1943 . . . did make and deliver to the Cincinnati Area Rent Office of the Office of Price Administration . . . certain documents, knowingly, wilfully, and unlawfully making therein false representation, said documents being an application to bring within Regulation 54A . . . the Rosedale Apartments, 3547 Rosedale Place, Cincinnati, Ohio, and as required by the regulations, application with a registration (Form DH-D) covering hotels and rooming houses; said application and registration being as herein set forth. [The document is identical to that set forth in the Record at pp. 24–26].

"Said document is false in that said apartments had not been rented or regularly offered for rent on or prior to March 1, 1942, for the amounts set forth in said registration under the so-called heading of temporary and semipermanent rates nor had said apartments been rented or regularly offered for rent for different rates based upon different number of occupants as set forth in the registration, all contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States of America."

cision. Section 204 (a) of the Act prohibits the Emergency Court of Appeals from considering any objection to a Regulation or order unless such objection was first set forth in the protest underlying the complaint. The court refused to consider petitioners' request, upon oral argument of the cause, that Section 4 (a) of the Housing Regulation be construed to permit petitioners to utilize a sliding scale of maximum rents for their apartments, because the question had not been presented to the Administrator in the protest, as required by the Act (R. 76). For the same reason, the court declined to consider the question whether Section 4 (a), if construed to prohibit a plan of rentals varying with the term of occupancy, would be in accordance with law.

Petitioners, however, contend that they were entitled to a decision not only on the question whether the denial of consent to their election to come under the Hotel Regulation was reasonable, but also on the question whether Section 4 (a) of the Housing Regulation permits a "sliding scale of rents" (Pet. 12). They assert that "It is, and always has been, immaterial to Petitioners which Regulation they are subjected to, if the practice of variable and sliding scale of rents could be maintained" (Pet. 13). Without pointing to any specific allegation in their petition or protest in the administrative proceedings that the Housing Regulation be so construed, or that it would be

otherwise invalid, petitioners urge that the scope of the relief requested of the Administrator necessarily included such a request for an interpretation and an attack upon the Housing Regulation (Pet. 12–15), so that those issues were properly before the Emergency Court of Appeals.

Initially, there is no merit in petitioners' contentions that a question of construction of Section 4 (a) of the Housing Regulation was presented to the Administrator, or that it was the duty of the Emergency Court of Appeals to construe that Section. The document filed with the Administrator was a protest to an order under the Hotel Regulation. It did not comply with the procedural requirements for obtaining an official interpretation of a regulation [9] and was barren of any suggestion that an interpretation of another Regulation was sought (R. 1). In any event, since an official interpretation alone is not a "regulation, order, or price schedule," [10] the withholding or issuance of an interpretation is not subject to protest and cannot ground a complaint in the Emergency Court. Emergency Price Control Act of 1942, Section 204 (a).[11] See *Buckeye Parking Corporation* v. *Bowles,* No. 94 (decided

[9] The method for obtaining an interpretation is set forth in Revised Procedural Regulation No. 3, sub-part D, Sections 1300.241–1300.244, 8 F. R. 526, 1798, 3534, 5481.

[10] Emergency Price Control Act, Sections 203 (a) and 204 (a).

[11] Appendix, *infra*, p. 19.

March 28, 1944 by the Emergency Court of Appeals).[12]

Concededly, the question of the validity of the Housing and Hotel Regulations, construed to prohibit petitioners from employing a variable rental scale thereunder, might have been presented to the Emergency Court if the underlying protest had attacked either or both on that ground, and had been timely filed. *Buckeye Parking Corporation* v. *Bowles, supra.* The language of the protest, however, demonstrates that no objection to the legality of either Regulation was advanced before the Administrator. It was entitled "Protest Against Order of Regional Administrator" (R. 1) and states, in part (R. 1, 2):

> Protestants say also that on March 19, 1943, the Rent Director for said area issued an order concerning the subject property or housing accommodation, finding that the provisions of the Maximum Rent Regulations for Hotels and Rooming Houses were not adaptable to the subject property. This order was affirmed by order of the Regional [Administrator] for the Third Regional Office under date of June 15, 1943, and it is against that order, which is attached hereto and marked "Protestants Exhibit 1," that this protest is directed.

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[12] Since an interpretation is not a "regulation, order, or price schedule," petitioners are not foreclosed from raising the question of its reasonableness in enforcement or other proceedings. Emergency Price Control Act, Section 204 (d).

By way of relief, the protest requested the Administrator (R. 4):

> to consider the foregoing statements, the exhibits attached hereto, and the Maximum Rent Regulations for Hotels and Rooming Houses, it being protestants' request that the orders heretofore made in this matter be reversed, and the Area Rent Director ordered to consent to Protestants' registration of the subject property under Maximum Rent Regulations for Hotels and Rooming Houses.

Finally, from a procedural as well as substantive point of view the protest could not constitute an attack upon the validity of the Housing Regulation. The protest, filed more than 60 days after issuance of that Regulation, is barren of any statement as to the new grounds for protest.[13]

The Emergency Court, therefore, had no jurisdiction to consider and properly declined to rule upon any question of the validity of the Housing Regulation or of the Hotel Regulation. Emergency Price Control Act, Section 204 (a).[14] See *Patrick Cudahy Family Company* v. *Bowles,* 138 F. (2d) 574, certiorari denied, No. 518, present Term.

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[13] Section 203 (a) of the Act requires protests filed after the expiration of such 60 days to be based on new grounds (Appendix, *infra*, p. 18). Revised Procedural Regulation No. 3, (8 F. R. 526) requires that the protestant present a concise statement as to when the new grounds for protest arose (Section 1300.219 (f)).

[14] Appendix, *infra*, p. 19.

2. The single issue presented for decision by the Emergency Court of Appeals was, as stated by the court (R. 77):

> * * * whether the Administrator acted arbitrarily, capriciously, or otherwise not in accordance with law by his refusal to consent to complainants' election to register their rental accommodations under the Hotel Regulation.[16]

In applying the criterion of Section 1 (e) of the Hotel Regulation, the Administrator had before him the evidence in the Record. This evidence consists of petitioners' averments, among others, that they had "approximately ten years operation under a variable or sliding scale of rents as determined by the term of occupancy and the number of occupants," and "approximately ten years of operation during which period accommodations for transient guests have been at all times available" (R. 2). The Record also contains petitioners' statement that "We have been successful over a period of years in eliminating daily and weekly, and in the main, one and two months' renters" (R. 48), and petitioners' Exhibit 2 showing that on March 1, 1942, November 1, 1942, and July 29, 1943, all of the units in

[16] Section 204 (b) of the Act provides: "No such regulation, order, or price schedule shall be enjoined or set aside, in whole or in part, unless the complainant establishes to the satisfaction of the court that the regulation, order, or price schedule is not in accordance with law, or is arbitrary or capricious."

petitioners' accommodations were actually rented for terms of six months or longer (R. 6).

On the basis of these data and the other evidence in the Record, the Administrator found that petitioners' actual practice immediately prior to the maximum rent date and well into 1943, as distinct from a paper practice during that period, was to rent their units for permanent occupancy (R. 13–14). He therefore determined that petitioners' actual rental practices were not better adapted to the Hotel Regulation than to the Housing Regulation.

This determination was affirmed by the Emergency Court of Appeals, as its opinion clearly shows, on the basis of the evidence before the Administrator and in the Record.

Petitioners urge, however, that the Emergency Court erroneously dismissed the complaint on purely "adjective" grounds or without due regard to the statutory standard for review (Pet. 15–19). They stress the following language from the court's opinion (R. 80):

> In no case may unsupported averments not admitted by the Administrator be held to be of sufficient weight to overcome the presumption of law that the Administrator's decision is proper.

and assert that, in fact, the record shows that the averments as to their rental practices are supported by evidence. Finally, they argue that those averments should have been taken as true

for the reason that they were either admitted by the Administrator or, at least, not denied.

However, examination of the record and the entire paragraph of the court's opinion from which the sentence referred to above was quoted shows patently that the decision below was rendered on the undisputed facts in the Record, and did not turn upon a presumption—as it might have (R. 80). This is illustrated by the next sentence of the court's opinion, which reads (R. 80):

> In this case, they [the general averments of petitioners] are of even less weight, inasmuch as the usual presumption is supported by undisputed facts in the record.[17]

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[17] To support their position that the allegations with respect to rental practices were supported by evidence, petitioners urge that such allegations were not denied by the Administrator in the administrative proceedings or in the Emergency Court of Appeals, but were in fact admitted by the local area rent attorney for the Office of Price Administration (Pet. 17–18). However, as pointed out in the opinion of the court, the statements in the Administrator's opinion accompanying the order denying the protest were "unquestionably inconsistent with an admission that any practice of renting to short term occupants on a sliding scale was currently being followed" (R. 80). The allegations of the complaint were directly put in issue by the Answer to the complaint (R. 66, Section 2). The so-called admissions in the letter of the local area rent attorney (R. 20–22) were, at most, no different than the general averments later made in the protest and in the complaint, and constituted only part

The opinion as a whole reveals meticulous study of the record and a finding that the evidence supported the Administrator's determination.

CONCLUSION

The decision below is correct and presents no question of general importance. The petition should therefore be denied.

Respectfully submitted.

CHARLES FAHY,
Solicitor General.

RICHARD H. FIELD,
General Counsel,
Office of Price Administration.

MAY 1944.

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of the evidence before the Administrator and the court. Moreover, a careful reading of the letter plainly indicates that the statements were not in fact admissions but merely constituted a summary of the facts previously set forth by the petitioners (R. 20, 21).

APPENDIX

1. Pertinent provisions of the Emergency Price Control Act of 1942, as amended, c. 26, 56 Stat. 23; c. 578, 56 Stat. 765, are as follows:

> SEC. 203. (a) Within a period of sixty days after the issuance of any regulation or order under section 2, or in the case of a price schedule, within a period of sixty days after the effective date thereof specified in section 206, any person subject to any provision of such regulation, order, or price schedule may, in accordance with regulations to be prescribed by the Administrator, file a protest specifically setting forth objections to any such provision and affidavits or other written evidence in support of such objections. At any time after the expiration of such sixty days any persons subject to any provision of such regulation, order, or price schedule may file such a protest based solely on grounds arising after the expiration of such sixty days. Statements in support of any such regulation, order, or price schedule may be received and incorporated in the transcript of the proceedings at such times and in accordance with such regulations as may be prescribed by the Administrator. Within a reasonable time after the filing of any protest under this subsection, but in no event more than thirty days after such filing or ninety days after the issuance of the regulation or order (or in the case of a price schedule, ninety days after the effective date thereof specified in

section 206) in respect of which the protest is filed, whichever occurs later, the Administrator shall either grant or deny such protest in whole or in part, notice such protest for hearing, or provide an opportunity to present further evidence in connection therewith. In the event that the Administrator denies any such protest in whole or in part, he shall inform the protestant of the grounds upon which such decision is based, and of any economic data and other facts of which the Administrator has taken official notice.

* * * * *

SEC. 204. (a) Any person who is aggrieved by the denial or partial denial of his protest may, within thirty days after such denial, file a complaint with the Emergency Court of Appeals, created pursuant to subsection (c), specifying his objections and praying that the regulation, order, or price schedule protested be enjoined or set aside in whole or in part. A copy of such complaint shall forthwith be served on the Administrator, who shall certify and file with such court a transcript of such portions of the proceedings in connection with the protest as are material under the complaint. Such transcript shall include a statement setting forth, so far as practicable, the economic data and other facts of which the Administrator has taken official notice. Upon the filing of such complaint the court shall have exclusive jurisdiction to set aside such regulation, order, or price schedule, in whole or in part, to dismiss the complaint, or to remand the proceeding: *Provided,* That the regulation, order, or price schedule may be modified or rescinded by the Administrator at any time notwithstanding the pendency

of such complaint. No objection to such regulation, order, or price schedule, and no evidence in support of any objection thereto, shall be considered by the court, unless such objection shall have been set forth by the complainant in the protest or such evidence shall be contained in the transcript. If application is made to the court by either party for leave to introduce additional evidence which was either offered to the Administrator and not admitted, or which could not reasonably have been offered to the Administrator or included by the Administrator in such proceedings, and the court determines that such evidence should be admitted, the court shall order the evidence to be presented to the Administrator. The Administrator shall promptly receive the same, and such other evidence as he deems necessary or proper, and thereupon he shall certify and file with the court a transcript thereof and any modification made in the regulation, order, or price schedule as a result thereof; except that on request by the Administrator, any such evidence shall be presented directly to the court.

(b) No such regulation, order, or price schedule shall be enjoined or set aside, in whole or in part, unless the complainant establishes to the satisfaction of the court that the regulation, order, or price schedule is not in accordance with law, or is arbitrary or capricious. The effectiveness of a judgment of the court enjoining or setting aside, in whole or in part, any such regulation, order, or price schedule shall be postponed until the expiration of thirty days from the entry thereof, except that if a petition for a writ of certiorari is filed

with the Supreme Court under subsection (d) within such thirty days, the effectiveness of such judgment shall be postponed until an order of the Supreme Court denying such petition becomes final, or until other final disposition of the case by the Supreme Court.

* * * * *

(d) Within thirty days after entry of a judgment or order, interlocutory or final, by the Emergency Court of Appeals, a petition for a writ of certiorari may be filed in the Supreme Court of the United States, and thereupon the judgment or order shall be subject to review by the Supreme Court in the same manner as a judgment of a circuit court of appeals as provided in section 240 of the Judicial Code, as amended (U. S. C., 1934 edition, title 28, sec. 347). The Supreme Court shall advance on the docket and expedite the disposition of all causes filed therein pursuant to this subsection. The Emergency Court of Appeals, and the Supreme Court upon review of judgments and orders of the Emergency Court of Appeals, shall have exclusive jurisdiction to determine the validity of any regulation or order issued under section 2, of any price schedule effective in accordance with the provisions of section 206, and of any provision of any such regulation, order, or price schedule. Except as provided in this section, no court, Federal, State, or Territorial, shall have jurisdiction or power to consider the validity of any such regulation, order, or price schedule, or to stay, restrain, enjoin, or set aside, in whole or in part, any provision of this Act authorizing the issuance of such regulations or orders, or making effective

any such price schedule, or any provision of any such regulation, order, or price schedule, or to restrain or enjoin the enforcement of any such provision.

2. Pertinent provisions of the Rent Regulation for Hotels and Rooming Houses, 7 F. R. 8602; 8 F. R. 7334, are as follows:

SECTION 1. *Scope of this regulation*—(a) *Rooms in hotels and rooming houses and Defense-Rental Areas to which this regulation applies.* This regulation applies to all rooms in hotels and rooming houses within each of the defense-rental areas and each of the portions of a defense-rental area (each of which is referred to hereinafter in this regulation as the "Defense-Rental Area"), which are listed in Schedule A of this regulation, except as provided in paragraph (b) of this section.

* * * * *

(e) *Election by landlord to bring housing under this regulation.*—Where a building or establishment which does not come within the definitions of a hotel or rooming house contains one or more furnished rooms or other furnished housing accommodations rented on a daily, weekly, or monthly basis, the landlord may, with the consent of the Administrator, elect to bring all housing accommodations within such building or establishment under the control of this regulation. A landlord who so elects shall file a registration statement under this regulation for all such housing accommodations, accompanied by a written request to the Administrator to consent to such election.

If the Administrator finds that the provisions of this regulation establishing maximum rents are better adapted to the rental practices for such building or establishment than the provisions of the Rent Regulation for Housing, he shall consent to the landlord's election. Upon such consent, all housing accommodations within such building or establishment which are or hereafter may be rented or offered for rent shall become subject to the provisions of this regulation, and shall be considered rooms within a rooming house for the purposes of the provisions relating to eviction.

SEC. 4. *Maximum rents.*—This section establishes separate maximum rents for different terms of occupancy (daily, weekly, or monthly) and numbers of occupants of a particular room. Maximum rents for rooms in a hotel or rooming house (unless and until changed by the Administrator as provided in section 5) shall be:

(a) *Rented or regularly offered during maximum rent period.*—For a room rented or regularly offered for rent during the thirty days ending on the maximum rent date, the highest rent for each term or number of occupants for which the room was rented during that thirty-day period, or, if the room was not rented or was not rented for a particular term or number of occupants during that period, the rent for each term or number of occupants for which it was regularly offered during such period.

SEC. 13. *Definitions.*—(a) When used in this regulation the term:

* * * * *

(13) "Hotel" means any establishment generally recognized as such in its com-

munity, containing more than 50 rooms and used predominantly for transient occupancy.

(14) "Rooming house" means, in addition to its customary usage, a building or portion of a building other than a hotel in which a furnished room or rooms not constituting an apartment are rented on a short time basis of daily, weekly, or monthly occupancy to more than two paying tenants not members of the landlord's immediate family. The term includes boarding houses, dormitories, auto camps, trailers, residence clubs, tourist homes or cabins, and all other establishments of a similar nature.

3. Pertinent provisions of the Rent Regulation for Housing, 7 F. R. 8596; 8 F. R. 7322, are as follows:

SECTION 1. *Scope of this regulation.*—(a) *Housing and defense-rental areas to which this regulation applies.* This regulation applies to all housing accommodations within each of the defense-rental areas and each of the portions of a defense-rental area (each of which is referred to hereinafter in this regulation as the "defense-rental area"), which are listed in Schedule A of this regulation, except as provided in paragraph (b) of this section.

* * * * *

(b) *Housing to which this regulation does not apply.*—This regulation does not apply to the following:

* * * * *

(3) *Rooms in hotels, rooming houses, etc.*—Rooms or other housing accommodations within hotels or rooming houses, or housing accommodations which have been,

with the consent of the Administrator, brought under the control of the Rent Regulation for Hotels and Rooming Houses pursuant to the provisions of that regulation.

SEC. 4. *Maximum rents.*—Maximum rents (unless and until changed by the Administrator as provided in section 5) shall be:

(a) *Rented on maximum rent date.*—For housing accommodations rented on the maximum rent date, the rent for such accommodations on that date.

SEC. 13. *Definitions.*—(a) When used in this regulation the term: * * *

(11) "Hotel" means any establishment generally recognized as such in its community, containing more than 50 rooms and used predominantly for transient occupancy.

(12) "Rooming house" means, in addition to its customary usage, a building or portion of a building other than a hotel in which a furnished room or rooms not constituting an apartment are rented on a short-time basis of daily, weekly, or monthly occupancy to more than two paying tenants not members of the landlord's immediate family. The term includes boarding houses, dormitories, auto camps, trailers, residence clubs, tourist homes or cabins, and all other establishments of a similar nature.

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